BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-316-C - ORDER NO. 2005-495

OCTOBER 3, 2005

IN RE: Petition of BellSouth Telecommunications, Inc. to Establish a Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law.	))))	ORDER DENYING REHEARING OR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration of Order No. 2005-247 filed by NuVox Communications, Inc., Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, and Xspedius Management Co. of Spartanburg, LLC (collectively the "Joint Petitioners"). Because of the reasoning as discussed below, we deny and dismiss the Petition.

First, the Joint Petitioners allege that Order No. 2005-247 is erroneous as a matter of law because it amends existing interconnection agreements in a manner other than that agreed to by the parties and required by federal law. This is not a new argument. It was raised by the Joint Petitioners prior to issuance of Order No. 2005-247, and indeed, it was addressed in that Order at 5, where we stated that "we agree with the New York Commission, which stated that 'Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers are eliminated as of March 11,

2005.'" Thus, the right to assert contractual obligations must be read congruently with one of the overall goals of the *TRRO*, which was that certain classes of UNEs were no longer to be made available after March 11, 2005, at TELRIC prices." We further stated that "the FCC has the authority to make its [TRRO] order effective immediately regardless of the contents of particular interconnection agreements" and that "the FCC may undo the effects of its own prior decisions, which have been vacated by the Federal Courts on several occasions." These statements are well-founded in law and are consistent with the decisions of various federal courts and other State Commissions. Therefore, the first ground of the Petition is without merit.

Second, the Joint Petitioners also restate their arguments that the Abeyance Agreement exempts them from the Commission's Order. Once again, we addressed this argument in Order No. 2005-247 wherein we stated: "[t]he Abeyance Agreement simply provides that the parties will continue to operate under their current Commission-approved interconnection agreements until they move into a new agreement (either via negotiated agreement or via arbitration pursuant to a subsequent petition for arbitration of a new interconnection agreement.)" Order No. 2005-247 at 9. As we noted in our Order, "[t]he Agreement says nothing of changes of law that might be mandated by the FCC in the TRRO." Id. We further noted that the Joint Petitioners "argue that BellSouth essentially gave up the right to implement [the new rules the FCC adopted in its *TRRO*] for the current Agreement even before any party knew what those rules would contain." Id. However, we rejected that argument "because it impermissibly leads to unreasonable

results." Id. We see no reason to revisit our decision with regard to the Abeyance Agreement.

Because of this reasoning, we deny and dismiss the Petition. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)